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March 1, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 10, 2006

Case Number: TSO-0444

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual should be granted access authorization. As discussed below, I find that access authorization should not be granted in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concern.

The security concern cited in the letter involves the individual's excessive use of alcohol. According to the letter, during his college years the individual admittedly: (i) drank to intoxication

1/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

three or four days per week, and consumed alcohol four to five hours a day; (ii) drove while intoxicated about twelve times a year; and (iii) experienced blackouts due to excessive alcohol consumption. The letter also noted that during his post-college years, 2001-2004, the individual drove while intoxicated approximately twelve times per year, and that during the past two years the individual had driven while intoxicated once or twice, after consuming between nine to fifteen beers. According to the notification letter, during the period between April 2005 to April 2006, the individual has been intoxicated two or three times per month, consuming from six to fifteen beers.

Further, the notification letter pointed out that a DOE consultant psychiatrist diagnosed the individual as using alcohol habitually to excess, and as suffering from alcohol dependence, an illness which causes or may cause a significant defect in judgment or reliability. In his written report to the DOE, the DOE consultant psychiatrist indicated that in order to demonstrate adequate evidence of "rehabilitation" from these conditions, the individual would need to attend Alcoholics Anonymous (AA) and work through all of the 12 steps with a sponsor at least once a week for a minimum of 200 hours over at least a year's time, and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of two years. The DOE consultant psychiatrist further stated that in the alternative, the individual could satisfactorily complete a professionally run, alcohol treatment program, either inpatient or outpatient, including aftercare, for a minimum of six months and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of three years after the completion of the program. Further, the DOE consultant psychiatrist indicated that if the individual did not complete one of the above rehabilitation programs, he would need to demonstrate a minimum of five years of abstinence from alcohol and all non-prescribed controlled substances in order to show evidence of "reformation." According to the notification letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J) and 10 C.F.R. § 710.8(h)(hereinafter Criterion H). ²

2/ Criterion J security concerns relate to an individual's use of alcohol habitually to excess, or to an individual's having been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. Criterion H concerns relate to an illness or mental
(continued...)

The notification letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified on his own behalf, and presented the testimony of four personal witnesses: two supervisors, a co-worker and a friend. He also presented the testimony of his own psychologist. The DOE counsel presented the testimony of the DOE consultant psychiatrist.

II. Hearing Testimony

A. The Individual

The individual admitted that he is an alcoholic. He recognized that alcohol has caused him problems and agrees with the DOE consultant psychiatrist's diagnosis of alcohol dependence. Transcript of Hearing (hereinafter Tr.) at 44-46. He admitted to very heavy alcohol use in college, particularly in his senior year when he drank to the point of intoxication about 30 times. Tr. at 50. He stated that he had cut back from that heaviest use after he graduated. Tr. at 50-51. He testified that he stopped drinking in July of 2006. Tr. at 51. He indicated that he met with his psychologist on one occasion, and has attended one session of an alcohol education program offered by his psychologist's treatment center. Tr. at 63. He acknowledged that he does not yet have a complete treatment plan with this psychologist, but stated that he plans to meet with her to develop one. Tr. at 66. He stated that he is confident that treatment will help him and is willing to go for treatment two or three times a week, if necessary. Tr. at 70. He will use his friends and the employees at his psychologist's office for assistance in staying sober. He is seeking to develop pastimes that do not involve alcohol use. Tr. at 76.

2/ (...continued)

condition which, in the opinion of a psychiatrist or licensed clinical psychologist causes or may cause, a significant defect in judgment or reliability.

B. Individual's Supervisors, Co-worker, and Friend

1. Supervisor # 1

This witness has known the individual since August 2006 and sees him daily. Tr. at 18. He described the individual's performance as exceptional. Tr. at 19. He indicated that he has never seen the individual use alcohol and that the individual's performance at work has not been affected by alcohol. Tr. at 19. He stated that the individual had mentioned to him that he had recently stopped use of alcohol. Tr. at 20.

2. Supervisor # 2

This witness has known the individual since 2005 and described himself as the individual's "first-line supervisor." Tr. at 35. He believes that the individual is a good performer on the job. Tr. at 38. Since he is located in a different state from the individual, he sees the individual infrequently, about every three or four months. Tr. at 36. He was aware that the individual used alcohol heavily in college, but testified that the individual told him that he had abstained since July (of 2006). Tr. at 37. He has never seen the individual drink to excess, and has seen him drink one beer on one occasion. Tr. at 39.

3. Co-Worker

This witness has known the individual since August 2006, and sees him daily at work. Tr. at 23. She does not see the individual socially on a regular basis. Tr. at 28. She does not believe that the individual's work has ever been affected by alcohol. Tr. at 25. She was aware that the individual used alcohol heavily while he was in college, but she has never seen him use alcohol. Tr. at 24, 26. She testified that the individual told her that he stopped using alcohol in July 2006.

4. Individual's Friend

This witness has known the individual since they were in college together in 1997. Tr. at 9. In August of 2006, they lived together for one month while the individual was establishing himself in the same region where he and the witness now live. Tr. at 10. They saw each other daily during that period, but currently see each other only about once a month. Tr. at 10. She testified that she and the individual "got into trouble" in college as a result of excessive use of alcohol. Tr. at 10. The last time she saw the individual

use alcohol was in March of 2006. Tr. at 11. She testified that the individual told her he had stopped using alcohol as of June or July 2006 [she could not distinctly remember]. Tr. at 14.

C. Individual's Psychologist

The individual's psychologist is a certified addictions counselor and the owner and director of a treatment center. Tr. at 78. She testified that she met with the individual on one occasion in January 2007 for two hours. Tr. at 79. She agrees with the diagnosis of the DOE consultant psychiatrist that the individual is alcohol dependent. Tr. at 80, 82. She believes that the individual needs education, counseling and participation in AA. Tr. at 84-85. With respect to the length of time for this program, the individual's psychologist stated that six months would be average, but she would have to see his progress in order to fully assess the appropriate time for treatment. Tr. at 86, 88. She does not disagree with the longer program recommended by the DOE psychiatrist. Tr. at 99-100. She believes that the individual should remain completely abstinent from alcohol. Tr. at 87.

D. DOE Consultant Psychiatrist

The DOE consultant psychiatrist reiterated his diagnosis set forth in his evaluation report that this individual is alcohol dependent. He believes that the individual meets virtually all of the alcohol dependence criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition (Text Revision (DSM-IV-TR)). Tr. at 93. The DOE consultant psychiatrist noted that at this point, all the individual has accomplished with respect to rehabilitation efforts is several months of abstinence. Tr. at 96. He believes that the individual needs several years of counseling, education, therapy and AA participation, depending on the program he follows. Tr. at 95-96. The DOE consultant psychiatrist testified that currently, the individual's risk of relapse, i.e., drinking alcohol to the point of intoxication within the next five years, is greater than 50%.

III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his

eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990)(strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. Analysis

The issue in this case is whether the individual has mitigated the Criteria J and H security concerns set forth in the notification letter. As discussed below, I find that the individual has not resolved the concerns.

The individual's psychologist and the DOE consultant psychiatrist agree that the individual is alcohol dependent. The individual does not dispute the diagnosis. Therefore, I must determine whether the individual has shown adequate evidence of rehabilitation/reformation from that condition. The individual's psychologist and the DOE consultant psychiatrist both recommend a significant abstinence period along with an educational/AA component. The DOE consultant psychiatrist recommends a two-year abstinence period. The individual's psychologist initially recommended a shorter period, but agreed that the longer period was certainly appropriate. With respect to an educational/therapeutic program, the two experts differed somewhat again. The DOE consultant psychiatrist recommended a two-year program and the individual's psychologist suggested an initial six-month program, with a review to assess progress.

I do not need to determine which rehabilitation program is appropriate for this individual. While the two experts differ somewhat, ultimately, the individual has satisfied neither of the experts' proposed plans. The individual claims that he has abstained from alcohol since July 15, 2006, although the overall evidence on this point is slight. The individual brought forward only one friend who socializes with him, and she certainly does not see him on a frequent basis. The other personal witnesses did not offer any significant testimony on the individual's abstinence in the past seven months. They merely confirmed what the individual himself had told them. Nevertheless, based on the individual's own testimony and the believable but thin testimony by his personal witnesses, I believe that there is sufficient evidence to conclude that he has been abstinent for about seven months. However, as is evident from the testimony of the experts in this case, the seven-month abstinence period is only a part of the necessary rehabilitation program. The individual must undergo an educational component here, and he has not yet begun in earnest to accomplish that aspect of his rehabilitation. He has attended one group session with his psychologist's counseling program and had a one-on-one meeting with his psychologist. Both experts recommended a considerably longer program, and I agree with their view. At this point, according to the DOE consultant psychiatrist, there is greater than a 50 percent risk that the individual will have a relapse within the next five years. In my opinion, that risk is too great to recommend that the individual be granted a security clearance. Accordingly, I find that while the individual has taken some steps towards rehabilitation, he has not fully resolved the security concerns associated with his alcohol dependence.

V. CONCLUSION

As the foregoing indicates, the individual has not resolved the Criteria H and J security concerns cited in the notification letter. It is therefore my decision that the individual should not be granted access authorization.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: March 1, 2007